

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.801 of 2014

JUDGMENT:

This second appeal is preferred challenging judgment and decree dated 27.06.2014 in A.S.No.11 of 2010 on the file of the VIII Additional District Judge, Nizamabad, whereunder preliminary decree granted in O.S.No.113 of 2004 on the file of the Principal Junior Civil Judge, Armoor, dated 24.12.2009, is confirmed.

2. Appellant herein is unsuccessful 1st defendant, who is the younger brother of plaintiff, and present second appeal is filed contending that the following are the substantial questions of law that would arise for determination of this Court:

1. Whether the findings of the Court below that Ex.A.1 prevails over Ex.B.1 Registered Sale Deed is correct in law more particularly when the vendors/executants are different persons.
2. Whether the findings of the Courts below as to title of the late Shivlingu without examining the factum that the executants of the Ex.A.1 had title or not is correct in law and legally sustainable.
3. Whether the findings of the Courts below is contrary to the settled principle of law that title does not pass by admission and hence the principle that person who has no title cannot convey better title ought to have been applied resulting in miscarriage of justice.
4. Whether the findings of the Courts below as regards the nature of the Suit Property as Joint family property on the face of the partition under Ex.B.6 family arrangement are correct more so when the suit property is not at all shown as Joint Family property.
5. Whether the Courts below were right in holding that the suit property is liable for partition without examining the vesting of title of suit property in Late Shivlingu through who the plaintiff claim rights is legally correct and sustainable.

3. Advocate for appellant specifically contended that when appellant is absolute owner of the property having purchased the same under Ex.B.1-registered sale deed, both the Courts have failed to examine the title over the property, therefore, above substantial questions of law are involved for determination by this Court.

4. I have perused the material papers including the judgments of the trial Court and appellate Court. As seen from the material, appellant himself filed an application before the trial Court to implead defendant No.2, who is the sister of plaintiff and defendant No.1, as a sharer and considering the same, the trial Court disbelieved the version of defendant No.1 that he is absolute owner of plaint schedule property purchased under Ex.B.1, therefore, all the above referred grounds urged on behalf of appellant are only in respect of factual aspects and no law is involved particularly, when appellant himself has approached the trial Court to implead his sister as sharer, the contention that he is absolute owner of the property is not at all tenable. For these reasons, I am of the view that no law is involved in this second appeal leave alone substantial questions of law.

5. Therefore, this second appeal is dismissed at admission stage.

6. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

30th November 2015.

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